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IN THE

Supreme Court of the United States

NO. ~~1404~~ 225

JULY TERM, 1966

ERWIN "RIP" SLOMANSON,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Erwin "Rip" Slomanson, the Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the order of the Supreme Court of the Commonwealth of Pennsylvania, made and entered February 25, 1966, refusing to review the decision of the Superior Court of Pennsylvania, sustaining his conviction, state remedies now having been exhausted.

OPINIONS BELOW.

The opinions of the Court of Quarter Sessions of Cambria County, Pennsylvania was not reported, but is printed in the State Court record (R. 260a). The per curiam opinion of the Superior Court of Pennsylvania is reported in 207 Pa. Super. 715, 214 A.2d 519 (1965).

No opinion was filed by the Supreme Court of Pennsylvania, but an Order was entered dismissing the Petition for allowance of Appeal. Copies of the opinion of the Superior Court and of the Order of the Supreme Court are annexed to the Appendix to this Petition.

JURISDICTION

(i) The Order sought to be reviewed was dated and entered February 25, 1966.

(ii) A Petition for Allowance of Appeal from the judgment of the Superior Court of Pennsylvania was filed in the Supreme Court of Pennsylvania on December 10, 1965, and was denied by the Court on February 25, 1966. No Order has been sought or granted to extend the time within which to Petition for Certiorari.

(iii) The statutory provisions believed to confer on this court jurisdiction to review the judgment or decree in question by Writ of Certiorari are 28 U.S.C. sections 1257 and 2254.

ADDENDUM

This petition was printed for a March 1966 filing date. After the printing, Counsel was informed that the Pennsylvania Supreme Court might reconsider the petition for appeal. A petition for reconsideration of the petition for allowance of appeal was filed on March 18, 1966. On May 23, 1966 the Pennsylvania Supreme Court denied the petition. The Order is annexed to the appendix to this petition.

QUESTION PRESENTED FOR REVIEW

Whether the Statute Is So Vague That It Does Not Lay Down Reasonably Ascertainable and Definite Standards of Conduct and Therefore It's Application to Defendant Deprives Him of His Liberty Without Due Process of Law.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. XIV, §1, "[N] or shall any state deprive any person of * * * Liberty * * * without due process of law."

PENNSYLVANIA STATUTE INVOLVED

Act of June 24, 1939, P.L. 872 § 718, Purdon's Pa. Stat. Ann., tit. 19, § 4718 (1963). "Abortion:

STATEMENT OF THE CASE

On December 9, 1964, Petitioner, Erwin "Rip" Slomanson, was indicted on the charge of abortion as created by the Act of June 24, 1939, P. L. 892, § 718, Purdon's Pa. Stat. Ann. tit. 28, § 4718 (1963). He was tried before the Honorable George W. Griffith, P.J., and a jury in the Court of Quarter Sessions of Cambria County. On March 18, 1965, the jury returned a verdict of guilty and on June 8, 1965, the Court en banc, refused Petitioner's Motion for a New Trial and Motion in Arrest of Judgment. On June 15, 1965, Petitioner was sentenced to pay the costs of prosecution, a fine of Six Hundred Dollars ($600.00) and to undergo imprisonment in the County Prison for a period of not less than one year and not more than three years.

Statement of the Case.

The principal witness in the prosecutions case, Barbara Conrad, was the unwed mother to whom Petitioner admittedly gave a bottle containing liquid which she was told would induce a miscarriage. Miss Conrad testified that the defendant delivered a package of pills and, later, a bottle of liquid. She testified that she paid the defendant a total of $600.00 for the drugs and, when the liquid proved ineffective, the promise to arrange with a doctor to perform a surgical abortion.

Robert Meagher, the putative father of the child of which Miss Conrad attempted to rid herself, testified that he merely told Petitioner of Miss Conrad's problem He denied any complicity in the subsequent events.

The Petitioner admitted that he gave Miss Conrad a bottle of liquid, however, he identified the liquid as common cough syrup purchased from a local drug store. Petitioner denied ever giving Miss Conrad any other items. Petitioner implicated Mr. Meagher in a scheme to dupe Miss Conrad out money on the pretext of helping her end her pregnancy. Mr. Meagher received two hundred and forty dollars ($240.00) of a total Six Hundred Dollars ($600.00) received from Miss Conrad.

It is Petitioner's contention that the application of the statute defining the crime of abortion in Pennsylvania would deprive him of due process of law in that the statute is so vague and indefinite that the Petitioner could not reasonably understand his acts as being encompassed thereby and that it is therefore void under the Fourteenth Amendment to the United States Constitution.

ARGUMENT

The Statute Is so Vague That It Does Not Lay Down a Reasonably Ascertainable and Definite Standard of Prohibited Conduct and Is Therefore Involved Under the Fourteenth Amendment to the United States Constitution.

Petitioner was charged with and convicted of the crime of abortion, the particular conduct which constitutes the crime is delimited by the Act of June 24, 1939, § 718, Purdon's Pa. Stat. Ann. tit. 18, § 4718 (1963):

> Whoever, with intent to procure the miscarriage of any woman, unlawfully administers to her any poison, drug or substance, or unlawfully uses any instrument, or other means, with the like intent, is guilty of felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding three thousand dollars ($3,000.00), or undergo imprisonment by separate or solitary confinement at labor not exceeding five (5) years, or both.

The particular words of which Petitioner complains are *unlawfully administers*. It is Petitioner's contention that the words are so indefinite and void of an ascertainable standard of conduct that, even if Petitioner had known of the statute, he would not have understood that the conduct with which he was charged was within the italicized language.

The Fourteenth Amendment to the Constitution of the United States provides that no "State shall deprive any person of * * * liberty * * * without due process of law." U. S. Const. Amend XIV, 31. The Supreme

Court has interpreted this proviso as requiring that one convicted of a crime have reasonable notice that the punishable conduct is prohibited.

In *Connelly v. General Constr. Co.*, 265 U.S. 385, the Court stated the notice rule:

> the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning . . . violates the first essential of due process of law.

In holding the word "gang" to indefinite in *Lanzetta v. New Jersey*, 306 US 451, the Court said:

> No one may be rigid at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commends of forbids. 306 U.S. at 4538 & n. 2.

In *Baggett v. Bullett*, 377 U.S. 360, the Court found the word "subversive" to be so vague and indefinite that it violated the Fourteenth Amendment. The Court reaffirmed *Cramp v. Board of Public Instruction*, 368 U.S. 278 in stating that the statute must be in terms "susceptible of objective measurement." 368 U.S. at 278.

Argument.

By the statute which is the subject of this appeal, the Petitioner is said to be among the class of persons who *unlawfully administers* an abortive. By the testimony of the alleged victims, however, petitioner's only act was to deliver a package of pills (R. 58a) and a bottle of liquid (R. 63a) to her. It is submitted that Petitioner could not have reasonably understood that the mere giving of a package of pills or a bottle of liquid would constitute *administering* those substances. Therefore, Petitioner respectfully prays that this Court issue a Writ of Certiorari to the Supreme Court of Pennsylvania, to review its order refusing to hear his appeal from the judgment of the Superior Court of Pennsylvania.

APPENDIX

Opinion of the Superior Court

COMMONWEALTH v. SLOMANSON

Superior Court of Pennsylvania

December 1, 1965

Green, Gibson & Abood, Richard J. Green, Jr., Caram J. Abood, Johnstown, For Appellant. Ferdinand F. Bionaz, Dist. Atty., William P. Kelly, Asst. Dist. Atty., Ebensburg, For Appellee.

Before ERVIN, P. J., and WRIGHT, WATKINS, MONTGOMERY, JACOBS and HOFFMAN, J.J.

PER CURIAM.

Order Affirmed,

Order affirmed, and the defendant is directed to appear in the court below at such time as he may be there called, and that he be by that court committed until he has complied with the sentence, or any part of it which had not been performed at the time the appeal was made a supersedeas.

Order of the Supreme Court of Pennsylvania.

And now, February 25, 1966, Petition denied.

PER CURIAM.

ORDER OF THE SUPREME COURT OF PENNSYLVANIA

And now, May 23, 1966, Petition denied
Per Curiam

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No. 225 July Term, 1966

ERWIN "RIP" SLOMANSON,
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v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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BATAVIA TIMES, APPELLATE COURT PRINTERS,
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5022 CARLYN DRIVE, PITTSBURGH, PA., 15236
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Counter-Statement of the Case

Petitioner neglected to state in his Statement of the Case that Commonwealth's testimony showed that the fluid given to Barbara Ann Conrad by petitioner contained ergot, a substance capable of inducing labor (R. 122a-130a).

Pennsylvania Statute Involved

Act of June 24, 1939, P. L. 872 § 718, Purdon's Pa. Stat. Ann. tit. 18 § 4718 (1963). "Abortion",

Counter-Argument

The claim that the words of the statute "unlawfully administers" are so vague that they do not lay down a reasonably ascertainable and definite standard of prohibited conduct was never presented to the trial court in petitioner's Motion to Quash (R. 31a-32a), or in petitioner's Motions and Reasons for New Trial and In Arrest of Judgment (R. 256a-259a), and is just an afterthought designed to create a federal question in this case. The word "administers" is defined in Webster's International Dictionary as "to give a dose", and "unlawfully" has been defined on a number of occasions by the Pennsylvania Supreme Court. See, for example, *West Penn Township School District v. International Brotherhood of Electric Workers*, 396 Pa. 408, 415, 145 A. 2d 258 (1959). Thus, the defendant was charged with unlawfully giving a dose of a substance in order to procure a miscarriage, a definition which certainly is not so vague as to be violative of the Fourteenth Amendment.

Respectfully submitted,

FERDINAND F. BIONAZ,
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Attorney for Respondent.

Court House,
Ebensburg, Pennsylvania.